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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States Parties due in 1992

Addendum *

URUGUAY

[2 August 1995]

Introduction

Geographical situation

1. The Republic of Uruguay lies on the left bank of the River Plate and the River Uruguay and has borders with the Republic of Argentina and the Federative Republic of Brazil. It has a total area of 318,392 km^2, including its mainland, islands, lakes, rivers and territorial sea. The average altitude is 116.70 m, with a high point of 513.66 m on Cerro Catedral in the Sierra Carapé. The latitude is 34° 22' 58" S. The longitude is 54° 40' 26" W.

Population

2. The latest population and housing census produced the figures given in annex 1.1/

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* The annexes to this report are available for consultation in the Secretariat's files.

1/ See annex 1: Results of the latest population and housing census, 1985.

Political and economic background

3. Since early in its history the social legislation of the Republic of Uruguay has always been advanced for the time of its adoption. The specific legislation on the rights of the child dates back to 1934, when the Children's Code was promulgated and came into force.

4. From the 1930s to the 1960s the economic growth indicators were very good, and the child mortality and literacy rates were important social benchmarks of the high living standards of most Uruguayans. The 1970s and 1980s saw the institutional breakdown and the military dictatorship which came to rule the country, with the harmful consequences which that situation had for respect for human rights and fundamental freedoms.

5. The peaceful settlement and non-violent transition in 1985 were the result of a considerable effort by all social sectors to bind up the wounds of the past and formulate long-term policies to overcome the economic deficits. The improvement of living conditions took a sharp upturn from 1985 in a constant trend which has lasted up to the present. Inflation levels have fallen considerably. The inflation rate stood at 128.9 per cent in 1990 but was down to 44 per cent by 1994. Real wages improved by 1.5 per cent in the period 1990-1994.2/

6. The Government believes that this success is due to its policy of commercial liberalization, which has resulted in a greater supply of consumer goods at lower prices and higher living standards for the middle and lower strata of society. The basic economic policies were to reduce public expenditure and the fiscal deficit, to accord priority to social measures, including the construction of housing for the neediest population groups, and to reform the State by privatizing the public banks.

7. With regard to the variables mentioned above, the number of people with unsatisfied basic needs fell significantly in the country's capital, from 10.4 per cent in 1984 to 4.8 per cent in 1993. In the hinterland towns the figure fell from 22.5 per cent to 14 per cent in 1993.

8. At the regional level the gamble of joining the Common Market of the South indicates Uruguay's expectation of growth in the context of the objectives of economic solidarity and honest negotiation which characterized the agreements. The long-awaited proposals of the Common Market redounded to the collective benefit of our Uruguayan, Argentinian, Brazilian and Paraguayan children.

System of Government

9. The Republic of Uruguay adopted the democratic republican system. Sovereignty is vested in the people and is exercised directly by the electorate through elections, initiatives and referendums, and indirectly through the representative branches (Executive, Legislature and Judiciary).

2/ See annex 2: Report of the General Coordinator of the Economic and Financial Advisory Service of the Ministry of the Economy and Finance.

Structure of the Legislature

10. The Legislature consists of the two chambers of the General Assembly. The Chamber of Deputies has 99 members elected directly by the people under a system of proportional representation. The Senate has 30 members elected directly by popular vote under a system of comprehensive proportional representation. Election to the posts of senator and deputy is subject to certain requirements. Deputies must be at least 25 years old, Uruguayan by birth or naturalized Uruguayan for five years. Senators must be at least 30 years old, Uruguayan by birth or naturalized Uruguayan for seven years.

11. Article 91 of the Constitution states that the following persons may not be deputies:

(a) The President and Vice-President of the Republic, members of the Judiciary, the Administrative Court and the Electoral Court, members of the councils or boards of directors of the autonomous bodies, decentralized services and departmental or local councils, and mayors or governors;

(b) Military or civilian employees of the Legislature, Executive or Judiciary, the Electoral Court, the Administrative Court, the Court of Audit, the departmental governments, and the autonomous bodies and decentralized services if they receive a salary, except for retirees or pensioners. This provision does not apply to university teaching positions or to other university personnel with teaching functions, but if the elected representative chooses to continue in such a position, it must be on an honorary basis for his term of office. Members of the military who resign their posts and salary in order to serve in the Legislature retain their rank, but for the duration of their legislative functions they may not be promoted and are exempt from all military discipline, and the time during which they hold their legislative positions is not counted for purposes of seniority for promotion.

12. In the case of senators, the list of disqualified persons also includes judges and public prosecutors, police officers and members of the military commanding forces or actively performing any other military function, unless they resign their positions three months prior to the election.

13. The functions of the General Assembly are set out in article 85 of the Constitution.

Structure of the Executive

14. The Executive consists of the President and Vice-President of the Republic and the Council of Ministers.

15. The President and Vice-President are elected directly by a simple majority of the popular vote under the simultaneous dual vote system.

16. The Vice-President of the Republic is also President of the General Assembly and of the Senate.

17. The President and Vice-President must be of Uruguayan birth and at least 35 years old. Their term of office is five years and they may be reelected provided that five years have elapsed since the end of their first term.

18. The Council of Ministers consists of the heads of the various ministries having exclusive powers over their respective portfolios. Membership of the Council of Ministers is subject to the same requirements and disqualifications as for the Senate.

19. At present Uruguay has the following ministries:

Ministry of the Interior;

Ministry of the Economy and Finance;

Ministry of Foreign Affairs;

Ministry of National Defence;

Ministry of Labour and Social Security;

Ministry of Industry, Energy and Mining;

Ministry of Transport and Public Works;

Ministry of Housing, Regional Planning and the Environment;

Ministry of Livestock, Agriculture and Fisheries;

Ministry of Education and Culture;

Ministry of Tourism.

20. The functions of the Executive are set out in article 168 of the Constitution.3/

Structure of the Judiciary

21. The Judiciary consists of the Supreme Court of Justice and the country's courts and tribunals. The Supreme Court of Justice consists of five members nominated by the Executive and elected by a qualified majority of two-thirds of the votes of all the members of the General Assembly.

22. The appointments must be made within 90 days of the post's falling vacant. If no appointment is made within this period, the post is assigned to the longest-serving member of the Appeals Court.

23. The maximum term of office is 10 years, with the possibility of reelection provided that five years have elapsed since the end of the earlier term of office.

24. The Judiciary consists of:

The Supreme Court of Justice;

The Appeals Court;

The judges;

The justices of the peace;

The misdemeanour courts.

3/ See annex 3 for the full text of the Constitution.

25. The holders of all these posts must be qualified lawyers or public notaries.

26. Article 254 of the Constitution stipulates that justice shall be free for all persons declared poor in accordance with the law.

27. The powers of the Supreme Court of Justice are set out in article 239 of the Constitution.

Authorities responsible for ensuring respect for human rights

28. The fundamental human rights are guaranteed in the preambular part of the Constitution. The list of rights and guarantees includes civil and political rights (arts. 7 to 40) and economic, social and cultural rights (arts. 40 to 71).

29. Furthermore, article 72 states that the list is not exhaustive or restrictive, for the other rights inherent in the human person or derived from the republican form of government cannot be excluded from the protection of the State.

30. In accordance with this provision and since the international treaties ratified by Uruguay acquire the internal legal status of ordinary law, the category of rights enjoying internal protection is dynamic and expanding.

31. All the authorities of the State have an obligation to respect the Constitution and the law. All violations of human rights constituting crimes or misdemeanours are tried by the impartial and independent courts of the Judiciary. If the crimes or misdemeanours are not specified in legislation, they fall subject to article 331 of the Constitution, which states:

> "The provisions of this Constitution which recognise individual rights, as well as those which confer powers and impose duties on the public authorities, shall not be without effect by reason of the lack of corresponding regulations, but such regulations shall be supplied on the basis of analogous laws, general principles of justice, and generally accepted doctrines."

Available recourse in the event of violation of human rights

32. The existing means of recourse provide a range of possibilities, depending on the nature of the violated right, the source of the violation, and its perpetrator.

Juridical nature of the violated right

33. Violations of fundamental rights such as the rights to life, physical integrity and freedom constitute criminal offences punishable by law. Uruguay's internal law provides the recourse of habeas corpus to protect personal freedom. Article 17 of the Constitution states:

> "In the event of unlawful detention, the person concerned or any other person may apply to the competent judge for a writ of habeas corpus

> requiring the detaining authority immediately to explain and justify the legal grounds for the detention, the decision of the aforementioned judge being final."

34. There is also the recourse of amparo, which was incorporated in the law relatively recently. Law No. 16,011 of 19 December 1988 states:

> "Any act or omission on the part of the State or para-State authorities or on the part of individuals which may immediately or imminently harm, restrict, alter or threaten in an clearly illegal manner any of the rights or freedoms explicitly or implicitly recognized in the Constitution may be subject to a writ of amparo."

Source of the violation

35. The source of the violation may take various forms: (a) a law; (b) a decree; or (c) an administrative act or decision.

36. If the source of the violation lies in the law, an action of unconstitutionality may be brought before the Supreme Court of Justice. Any person who believes himself to have been damaged in his direct, personal and legitimate interests has an active legal right to bring an action of unconstitutionality.

37. The Court's decision applies to the specific case without having any general scope and its effect is limited to the case in which it is handed down. An action of unconstitutionality may be brought by the electorate. Article 79 of the Constitution establishes a mechanism of direct democracy in the form of the referendum. The recourse of referendum may be brought against a law by 25 per cent of the total number of registered voters within one year of its promulgation, and the same proportion of voters has the right of initiative (proposal of laws) in the Legislature.

38. This means of recourse may be used against the whole of a law or against any of its articles, and the decision as to its admissibility falls within the exclusive competence of the supreme body in electoral matters, the Electoral Court.

39. If the violation has its source in an Executive decree, an action for its repeal and annulment may be brought before the Administrative Court.

40. Article 303 of the Constitution states that the decrees of departmental councils, which have the force of local regulations, may be appealed to the Legislature (Chamber of Deputies).

41. Administrative decisions may be challenged by means of an application for reversal lodged with the authority which took the decision. In the case of a subordinate authority the application for reversal must be made jointly with an application to the superior body. If these two means of recourse do not result in a decision in favour of the person suffering the harm, he is entitled to bring an action to have the decision declared null. Such actions may be brought once the means of administrative recourse are exhausted and are heard by the Administrative Court, which has jurisdiction over administrative decisions.

This Court will hear applications to nullify administrative decisions of the Government which are in conflict with a rule of law or have been taken ultra vires.

Compensation for victims

42. The victim of a violation of human rights has civil and administrative means of recourse to claim compensation for the damage suffered. When the damage is caused by an employee of the State, the victim may bring an action against the State itself, which is responsible for the damage in civil law. All this is without prejudice to the claims which the State may make against a public employee who caused the harm through gross negligence or fraud (art. 25 of the Constitution).

International human rights legislation and internal law

43. In Uruguay's internal law the Executive, acting through its agents, has the right to sign international treaties and is authorized to deposit the instruments of ratification or accession once the treaty has obtained parliamentary approval.

44. Accordingly, the procedure for establishing the will of the Uruguayan State to enter into an international commitment requires approval in internal law. This means that an ordinary law must be enacted in order for a treaty to become part of positive national law.

45. In the absence of an express constitutional or legal provision resolving the question of the legal precedence of a treaty for Uruguay, the doctrine is that all treaties have a status equal to that of an ordinary law. There is currently a clear trend for Uruguay's courts to apply the provisions of international agreements directly in their internal jurisdiction.

Dissemination and publicizing of these reports

46. There is no authority in the organic structure of the State having specific responsibilities in the field of human rights. As stated above, the internal protection stems from the combined effect of functions and powers shared between the Executive, the Legislature and the Judiciary. This is born out by the preparation of this report, for its drafting was entrusted to the Human Rights Section of the Ministry of Foreign Affairs, but contributions were also made by various public authorities and non-governmental organizations which decided to cooperate in the undertaking:

Public institutions

National Minors' Institute (INAME);

Social Policies Division of the Office of Planning and Budget (OPP);

Ministry of the Interior;

Ministry of Education and Culture.

Non-governmental organizations

Non-governmental Committee to Monitor the Convention on the Rights of the Child (Service, Peace and Justice in Latin America (SERPAJ), Defence for Children International (DCI), Children's Forum, etc.);

Assembly of Disabled Persons.

Children in Uruguay

47. Owing to the country's low birth rates, changes in reproductive behaviour, and emigration by persons of reproductive age, children constitute a small population group in Uruguay. According to the forecasts of the National Statistical Institute for the five-year period 1995-2000, the annual population growth rate will be 6.43 per thousand, which indicates that the demographic trend will not undergo any significant reversal in the near future. The ageing of Uruguay's population means that the proportion of children aged under 15 is tending to decline in relation to the over-60 group which is increasing numerically. Today's emigrants are younger and better educated people, leaving the burden of biological and social reproduction to those population groups which are in a less favourable economic situation. A 1994 study shows that 27.7 per cent of children aged under 14 in Montevideo and 47.2 per cent in the rural interior live and grow up in households which lack the basic necessities.

The priorities of the decade of democracy

48. The restoration of democracy in 1985 marked the beginning of a process in which the Government has been giving priority to social policies designed to correct the discrimination against children. Children have been gaining more space on the public agenda by means of various actions and programmes in the public and private sectors supported by international financial assistance.

49. The Governments which successively held office in the decade of democracy took up the problems of children and recognized that children are citizens capable of exercising rights and responsibilities, and they allocated resources for programmes to achieve the objectives of the social improvement of the situation of children.

50. The financial support of bodies such as the United Nations Children's Fund (UNICEF) constitutes a major driving force in the programmes which the Uruguayan State is trying to develop and consolidate with a view to securing the exercise of all the rights set out in the Convention.

51. The chapter on international cooperation goes into greater detail in the matters referred to above.4/

Article 1

52. In Uruguayan law a child is any physical person from birth until the age of majority of 21 years. Full legal capacity for civil purposes is acquired at

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4/ These two paragraphs are taken from the report of the Non-governmental Committee on the Rights of the Child for 1994. See annex 4.

the age of 21 years, subject to the early release or early majority provided for in the Civil Code. Both these legal procedures constitute forms of early termination of parental authority.

53. When they reach the age of 18 children may be released from parental authority. This procedure is subject to a number of formalities, such as the formalization of the release by legal deed and the prior express consent of the minor. The competent judge of the family courts and the Office of the Attorney-General are required by law to authorize the release. Once granted, the release is irrevocable. As a preventive measure against extravagance, the parents may retain half of the usufruct of the property of released children until they reach the age of majority (21 years).

54. Minors and orphans who have reached the age of 18 may apply to the competent family judge for early majority.

55. Article 303 of the Civil Code stipulates that the judge may not approve such applications without having heard the views of the minor's guardian and of the Office of the Attorney-General. Early majority granted by a judge is also irrevocable.

56. Without prejudice to early release or majority, important limits have been established to protect the minor's economic interests. Article 310 of the Civil Code stipulates prior approval by a court, subject to the penalty of nullification, when a minor seeks to enter into contracts concerning his property. This applies in particular to the sale or mortgaging of real estate, and to gifts or debts in excess of 500 readjustable units, equivalent to about $US 8,300.

57. Finally, it must be pointed out that the lawful marriage of minors produces the same effects as early release or majority with respect to the capacity to manage personal affairs and business.

58. The age of minority for criminal purposes is 18 years. The perpetrator of a crime may not be charged with the crime unless he is at least 18 years old. However, minors who engage in criminal behaviour are subject to the special procedure set out in articles 119 et seq. of the Children's Code followed in the juvenile courts.

Article 2

59. As stated in article 1 of the Constitution, the Republic of Uruguay is the political association of all the inhabitants of its territory with no distinction made between nationals and foreigners, men and women, beliefs, political opinions or economic situations. The principle of equality before the law embodied in article 8 of the Constitution provides that "All persons are equal before the law, no other distinctions being recognized among them save those of talent and virtue."

60. The Civil Code recognizes no distinctions between Uruguayans and foreigners with respect to the acquisition and enjoyment of civil rights. The racial integration of our country, which was formed from its origin by powerful waves of migration, and the peaceful coexistence of its various racial groups constitute one of the most striking features of the national character. This

was born out by an informal survey made in 1993 by the CIFRA company and printed in a national daily newspaper.5/ The survey indicated that most of the persons questioned would agree to their child's marrying an Italian (94 per cent), a Negro (77 per cent), or a Jew (71 per cent).

61. Another survey found that 73 per cent of Uruguayans would send their child to a school in which half of the pupils were from Jewish families.

62. The high level of acceptance of other races and nationalities justifies the assertion that the legislation is consistent with the practice of acceptance and tolerance posited by the principle of equality.

Article 3

63. All the authorities concerned with children in Uruguay take as their legal frame of reference the current Children's Code adopted in 1934. This Code states that the best interests of the child must guide all the practical measures and legal procedures affecting children. Although it is true that this legal text was a model for Latin America at the time of its adoption, it must be recognized that it has been overtaken by the modern developments in international human rights law.

64. Accordingly, and as a direct result of the adoption of the Convention on the Rights of the Child, the Executive, echoing the opinion of extensive non-governmental circles in Uruguayan society, decided in 1990 to create a commission to revise the legislation concerning the country's minors.

65. The primary aim of this commission was to bring the internal legislation into line with international developments concerning the rights of the child. The involvement in the commission of official agencies having responsibilities for children's affairs and university circles and associations of legal professionals created a forum for discussion and analysis which spent almost three years drafting the new Children's Code. With this initiative the Uruguayan State inaugurated a new era in the drafting of legislation with the direct involvement of non-governmental organizations in the debate to allow them to make their views known and enhance the proposed legislation.

66. At last, on 2 March 1994, the draft Children's Code prepared by this commission was endorsed by the Executive and submitted to the Parliament. The Legislature has still not approved the draft text and it is creating a new body to deal with the amendments and additions regarded as necessary.

67. The draft Code is based on the provisions of article 3 of the Convention concerning the comprehensive protection of children from conception to the age of majority and it regards children as active subjects of the rights of the child, eliminating any discrimination against children born out of wedlock and extending the obligation to care for the child to common-law spouses, uncles and aunts and step-parents, as well as introducing other new measures for similar purposes.

5/ El Pais, 26 September 1993.

68. It is particularly worth emphasizing that article 9 of the draft Code stipulates the joint responsibility of parents, family, community, society and the State in the protection and realization of the rights of the child.6/

Article 4

69. The full realization of economic, social and cultural rights is a permanent objective of the Uruguayan State. The economic and social indicators of the past decade show that significant progress has been made with respect to children. In a period of eight years the proportion of households below the poverty line in Montevideo fell from 20 per cent in 1984 to 9.5 per cent in 1989 and 6 per cent in 1992. In the same period, the number of households with unsatisfied basic needs fell by the significant amount of 50 per cent both in Montevideo and in the urban interior.

70. The figures show a sharp drop in the deficit in the drinking water supply in the urban interior (from 14.3 to 1.3 per cent), in the number of people living at the subsistence level (6.6 to 0.5 per cent) and in the overcrowding factor in accommodation. Despite these achievements, 20 per cent of children aged 14 and under in Montevideo and 27 per cent in the interior live in needy households, even though universal cover has been achieved for primary education.

71. The first UNICEF regular cooperation programme with Uruguay, carried out in the five-year period 1992-1996, coordinates methods of social intervention with the development of economic and social policies designed to break the vicious circle of poverty by guaranteeing full exercise of the rights of the child with respect to health, nutrition, primary education, food supplements, etc.

72. The Uruguayan State hopes that the mid-term review provided for in this technical cooperation programme will result in the refunding of the project until the targets of the Plan of Action for children agreed upon in the Declaration of the 1990 World Summit for Children have been fully achieved.

Article 5

73. The care, education and guidance of children is a right and a responsibility of parents. Nevertheless, the social community must collaborate in this undertaking in order to ensure that children can exercise their rights in full.

74. With regard to the guidance and counselling of parents or persons having children in their guardianship or care, the State, through the National Minors' Institute, cooperates with parents to secure the material, intellectual and moral improvement of their children. This specific commitment was assigned to the Institute in the law which established it in 1988. The cooperation takes the form of the provision of services of various kinds and scope. The established day-care centres furnish working parents with considerable State assistance, at no cost to themselves, by coping with the care and attention needs of their children during their absence.

6/ Draft Children's Code. See annex 5.

75. Multidisciplinary professional teams provide various levels of care to help children and protect them against the risks of abuse or material or moral neglect. Health services are provided at the national level on the basis of agreements with public and private institutions. In Montevideo the Health Division provides services in polyclinics and children's outpatient clinics accessible to the population at large. In the interior of the country every departmental chief town 7/ has a doctor, a psychologist and a dentist who provide primary health care. Here it is important to mention the work of NGOs which furnish assistance to children and their parents. The location of these services in poor areas and the fact that the health workers live alongside the local people make it possible to build closer links which facilitate the attainment of the objectives.

Article 6

76. The right to life is guaranteed by the Constitution. In 1994 the Bioethics Commission of the Chamber of Deputies examined and approved a bill which would legalize voluntary abortion by amending the existing legislation which made this form of interruption of pregnancy a crime.

77. This legislative move is designed to ensure the participation of the State health services in order to guarantee better standards of medical care and respect for any conscientious objection on the part of the attending doctor.

78. There has been a widespread national debate on the desirability of this proposal. The debate will probably continue over the coming months until the rejection or adoption of the bill by the full Legislature. With regard to the guarantees of the survival and development of the child, it is worth drawing attention to a number of specific measures designed to improve the level of fulfilment of this commitment.

79. The Public Health Service of the Ministry of Public Health offers comprehensive free treatment for children aged under four infected with the AIDS virus. In utero transmission accounts for 3.9 per cent of all the cases recorded in Uruguay (1,200 HIV-positive carriers and 200 cases of AIDS).

80. In 1994 children of school age were revaccinated against measles. In addition, all children aged four and under received the compulsory free vaccination against meningitis. Public investment in this sector in 1994 amounted to about $US 100 million.

81. There are also many programmes at the national and departmental level which seek to provide adequate cover where nutrition is concerned. The State has tried to make good the food deficits of children in poor areas by means of the following programmes:

Collective food assistance service operated through public canteens. There are nine canteens in Montevideo and 33 in the interior of the country;

7/ The biggest towns in the interior.

Assistance programme of public and private institutions based on the provision of dried food. This programme supports 325 centres with 26,000 beneficiaries;

Food supplements provided in two subprogrammes coordinated by the Ministry of Public Health (maternal and child services for 12,462 pregnant women and 74,421 children);

Child and family assistance centres; there are 61 centres in Montevideo and the interior, providing services to 3,180 children;

Nutrition education and supplementary diet programmes of the Ministry of Public Health operating at the primary health care level for pregnant women and for children up to the age of four;

Canteen services in public schools. The number of beneficiaries totals 155,957 for the whole country;

National Minors' Institute, which provides assistance to 2,766 recipients, including 1,032 boarders and 859 part-time boarders;

Programmes of the Montevideo Municipal Council: donation of 7,650 litres of milk a day for public schools; donation of 3,600 litres of milk a day for public canteens; and subsidized sale of milk to municipal shops in amounts totalling 14,490 litres a day;

Provision of fresh food to day-care centres under a UNICEF agreement and to local public canteens for poorer people.

Article 7

Right of the child to registration immediately after birth

82. In accordance with the internal legislation contained in the Civil Code, with the amendments introduced by Decree Law No. 1,430 of 11 February 1879, declarations of verified births in the territory of the Republic must be made to the authorities of the Civil Register within 10 days of the delivery. In rural areas the time-limit for registration is 20 days.

83. The legal obligation to declare a birth rests primarily with the father and then, if he fails or is unable to make the declaration, with the mother, and if both parents fail, with the oldest closest relative of the newborn child, provided that this person resides at the place of birth. If all else fails, the declaration must be made by the owner of the house in which the birth took place if it took place away from the home of the mother. If the child is born in a public institution or building or a building belonging to a corporation, the person responsible for management of the building carries a subsidiary responsibility to declare the birth.

84. Declarations of foundlings (a type of abandonment) must be made by the manager of the building where the child is left. In the case of an abandoned newborn infant, the persons finding the infant are required to report the facts immediately to the police or judicial authorities and to hand over any clothing or other evidence found.

85. Surgeons, gynaecologists, midwives or other persons attending delivery are required to report the births attended orally or in writing to the officials of the Civil Register. Births on the high seas are subject to the provisions of articles 35 and 36, which state:

> "If a birth takes place on board a Uruguayan vessel on the high seas or on a warship wherever located, the persons concerned shall issue a certificate stating the circumstances of the birth signed by the captain and two witnesses on board the vessel.
>
> The persons concerned shall deliver this certificate to a justice of the peace in any Uruguayan port at which the vessel puts in. If the vessel puts in to a foreign port, the certificate shall be delivered to the consular agent of the Republic, who shall transmit it through the Ministry of Foreign Affairs to the Office of Civil Status."

The right to a name

86. The legislation on civil status guarantees that every child shall have a name.

87. The birth records kept by the officials of the Civil Register must specify:

> The time, day, month, year and place of the birth;
>
> The sex of the baby;
>
> The name given or to be given to the baby;
>
> The forenames, surnames, occupation, nationality and residence of the father, mother and grandparents.

88. In the case of legitimate children, i.e. children born of a father and mother joined in civil matrimony, the record shows the surname of the father followed by the surname of the mother.

89. In the case of natural children, i.e. children born of parents who at the time of conception were not joined in matrimony, the unmarried father or mother must expressly or implicitly recognize the child. In this case, a natural child will have the surname of the father or mother who acknowledges him, or of both parents if both acknowledge him. In this latter case, the subsequent marriage of the parents of an illegitimate child makes him legitimate. Article 229 of the Civil Code states:

> "On presentation of the marriage certificate and the certificate acknowledging the natural child, the civil status official shall record the facts in the form established for legitimate children. Once this has been done, any pre-existing certificates or other documents shall become null and void and their presentation shall be prohibited."

90. In addition to express acknowledgement, there is also the possibility of tacit acknowledgement of civil status. This results from the verification by a competent judge of the notorious possession of the status of natural child.

91. The annexes to this report describe the functioning of these arrangements in our court practice.8/

The right to a nationality

92. In Uruguayan law citizenship may be either natural or legal. Natural citizens are all persons born in any part of the national territory and the children of a Uruguayan father or mother whatever their place of birth who enter the country and are recorded in the Civil Register.

93. Legal citizens are foreign men and women, with or without a family established in Uruguay, who meet the requirements of length of residence set out in the Constitution.

94. Nationality cannot be alienated even by naturalization in another country, and it is sufficient for recovery of the exercise of all the rights of citizenship to return to Uruguay and be entered in the Civil Register.

Article 8

95. The internal legislation guarantees all the rights protected by article 8 of the Constitution. As already stated, nationality cannot be alienated even by the adoption of another nationality.

96. A person's civil status cannot be the subject of any private transactions, being a matter of public order. Changes of civil status may be made only by means of a safe ruling by a competent judge and provided that the rules of due legal process have been observed. For an example of the restoration of identity, please refer to the case described in the annexes to this report,9/ which deals with the recovery of identity by a minor who had been deprived of it owing to the peculiar political conditions prevailing in the country in 1972.

Article 9

Paragraph 1

97. Article 41 of the preambular part of the Constitution states that the care and education of children to enable them to achieve their full intellectual and social capacity is a duty and a right of parents.

98. The specific legislation on minors, contained in the Children's Code, repeats this same principle and contains various provisions designed to prevent the separation of children from their family environment.

8/ Decision No. 12,245 of the Appeals Court of the second circuit, p. 238, vol. CVI, March-April 1993, in the periodical La justicia uruguaya. See annex 6.

9/ Ruling No. 12,294 of the Court of First Instance of Tacuarembó, p. 411, vol. VI, May-June 1993, in the periodical La justicia uruguaya. See annex 7.

99. Article 51 of the Constitution prohibits the separation of a child aged under three from the family to which he belongs. If the parents are economically unable to support their child, the State will prevent separation by subsidizing the family to which the child belongs.

100. Article 60 states that the parents of a child aged under 12 shall not entrust the child to persons outside the family without a decision awarding guardianship by the governmental body responsible for the interests of children in Uruguay, i.e. the National Minors' Institute (INAME).

101. If the parents are sentenced to imprisonment as the perpetrators of or accomplices in a crime against the person of their child, or if they have received two sentences of imprisonment for crimes against the person of one or more of their children, they lose with full legal effect their parental authority and the custody and maintenance of their children.

102. The new Children's Code, which is under discussion in the Parliament, states in its article 285 that even cases of ill- treatment which do not constitute criminal offences shall be grounds for loss of parental authority.

103. Spouses who are separated or in the process of divorce may at any time conclude agreements concerning the situation of their children (custody, care and maintenance, visiting rights). In the event of a conflict, a family judge makes a ruling, taking into account the best interests of the child.

104. Article 174 of the Civil Code states that in the event of de facto separation or divorce, unless there are serious grounds for not doing so, the custody of children aged under five shall be awarded to the mother. A judge shall rule in the case of older children, having heard the arguments of the parents and the opinion of the Office of the Attorney-General and having interviewed the child.

105. The situation of children with regard to custody, visiting rights and the legal obligation of parents to pay maintenance is determined by a prior and specific decision of the family courts in the event of dissolution of the marriage for any reason.

Paragraph 2

106. The right to be heard is guaranteed throughout the procedure specified in the internal family legislation. The opinions of the parents and the children are heard and taken into account in court decisions in family cases.

Paragraph 3

107. During proceedings in the family courts the spouse who is not living with the child has generous visiting rights at set times and places.

Paragraph 4

108. The existence of habeas corpus as a constitutional recourse means that any inhabitant of the Republic who is a relative by blood or by marriage of the person concerned is entitled to receive information about the reasons for an

arrest, detention or any other official measure affecting personal freedom. In this connection Uruguay's criminal procedure is public and adversarial at all its stages.

109. Article 22 of the Constitution stipulates that all criminal proceedings shall begin with a charge brought by the public prosecutor and that no secret inquiries or investigations may be carried out.

110. Article 15 of the Constitution states that no one may be arrested except in flagrante delicto or by written order of a competent judge based on reasonable grounds.

111. A person charged with a crime may not be held incommunicado by the police. A maximum period of 48 hours of incommunicado detention may be authorized by a criminal court. No one may be imprisoned or suffer any other punishment without due process and legal sentencing, and judges and other public officials are responsible in criminal and civil law for any violation of individual rights.

112. In order to improve the protection of individual rights and provide for swift action if it is necessary to collect information about persons subject to criminal proceedings, the Supreme Court of Justice has introduced a judicial information service for criminal cases and cases involving minors. The statute of this service requires it to keep comprehensive and individual files on persons detained by court order. Each individual file must contain:

The full name of the detainee;

His age;

His civil status;

His address and telephone number;

Particulars and addresses of his closest relatives;

Details of the court which ordered the detention;

The number of the court dossier;

The grounds for the detention;

The place of detention;

The date of detention and release.

113. If an institutional crisis arises, or in serious and unforeseen cases of external attack or internal disturbance, the President of the Republic may decree immediate security measures. The declaration of a state of emergency authorizes the arrest of persons and their transfer from one place to another in the national territory, assuming that they do not manage to leave the country. However, such persons may be detained only in places intended for the detention of offenders.

114. This emergency measure is subject to parliamentary scrutiny 24 hours after its adoption.

115. An overall assessment of the principles which guide these emergency arrangements indicates that the fundamental human rights, as the essential

guarantees of freedom, cannot suffer harm, even in situations of institutional breakdown.

Article 10

116. Article 37 of the Constitution guarantees the free entry of all persons to Uruguayan territory, their residence therein and their departure with their property provided that they obey the laws, except in cases of harm to third parties. Since the restoration of democracy in 1985 there has been no legal provision or administrative measure restricting entry to or departure from the national territory.

117. However, it must be pointed out that the travel of minors from or to the Republic for the purposes of family reunion is subject to the general regulations for issue and control of travel permits.

118. Persons under the age of 21 who wish to obtain a passport while their parents are living abroad must submit to Uruguay's consular agents an authorization endorsed by the Ministry of Foreign Affairs as a preliminary step to obtaining the passport.

119. In cases when it is impossible to obtain authorization from the persons empowered by the law to give it, a competent judge will issue a specific authorization for the trip.

Article 11

120. Uruguay has signed and ratified various international instruments on prevention of the illicit transfer and non-return of children abroad.

121. The following are the main multilateral instruments:

Convention on Protection of Children and Cooperation in respect of Intercountry Adoption adopted at The Hague Conference on Private International Law in 1993 and signed by Uruguay on 1 September 1993; still awaiting ratification;

Inter-American Convention on the International Traffic in Minors sponsored by the Organization of American States in 1994 and signed by Uruguay on 18 March 1994; still awaiting ratification.

122. The following are the bilateral instruments:

Convention on the International Return of Minors and Equality of Procedural Treatment signed with the Republic of Peru and ratified by internal Laws Nos. 15,719, 15,720 and 15,721 of 1989;

Convention on the Reciprocal Protection of Minors signed with the Republic of Chile in 1982 and ratified by Law No. 15,379;

Convention on the International Protection of Minors signed with the Argentine Republic in 1982 and ratified by Law No. 15,218.

Article 12

123. Minors have a right to be heard in proceedings which may modify their civil status. Current internal legislation guarantees that the views of children are heard in matters which directly affect them. In civil proceedings which modify a child's civil status the law stipulates the obligation of the judge hearing the case to interview the child in private.

124. Although these provisions justify the assertion that Uruguay complies fully with article 12 of the Convention, it should be pointed out that there is no legal requirement for a child to appear in all the judicial or administrative proceedings, but only when the law makes such appearance mandatory. In order to fill this gap in the law, the new Children's Code (see paras. 64-67 above) provides for the right of a child "to appear in person and at any time before the authority, to be heard and to receive appropriate legal assistance for counselling or defence".

125. Minors who engage in criminal behaviour are subject to a special procedure set out in article 119 of the Children's Code and corresponding article 346 of the Civil Code which state that, in order to establish the facts and the family and personal background of the child, the judge shall always interview the child and his parents or guardians, and visit any places and order any inquiries, reports or examinations that he sees fit; such matters must be mentioned in the decision, which must be accompanied by a full explanation of the grounds.

126. In all such cases minors are examined by a psychiatrist or other qualified doctor who reports on their physical and mental state.

Article 13

127. The right of freedom of opinion and expression is guaranteed in general terms for all the inhabitants of Uruguay. The Constitution states:

> "In all matters the right to express oneself orally, in private written communications or in the press or by any other means of expression shall be free of any restriction and not subject to prior censorship, but the author and when appropriate the printer or publisher shall be responsible, in accordance with the law, for any abuses which they commit."

128. Out of a concern to protect minors, the existing legislation limits their access to publications or performances which may damage their physical or psychological integrity. In addition, administrative regulations have recently been adopted which specify maximum opening hours for places of entertainment offering video games and prohibit minors from entering such places at night time.

129. Without prejudice to these provisions, the Uruguayan State believes that a child's right to freedom of expression and the respect which adults must pay to that right are enhanced if the child can express himself in the primary social group, the family.

130. In 1993 a non-governmental organization, Defence for Children International - Uruguay Section, with financial and infrastructural support from a number of State institutions conducted a survey of 409 children and

adolescents in the urban area of Montevideo. The main purpose of the survey was to determine, from the perspective of the children and adolescents, the content of the notion of "family". The survey incorporated the following variables: age, sex, level of education, nature of study institution, social origin and family composition.

131. With regard in particular to the parents' readiness to talk with and listen to their children, it is satisfactory to report that 96.6 per cent of those interviewed (387 children and adolescents) replied that their parents showed that readiness. In complete nuclear families (213) 60 per cent replied that their fathers and mothers responded equally to their need for attention. In 58 single-parent families (divorced, separated, etc.) it was usually the mother figure who was most ready to talk with the children.

132. With regard to discussion of ways of resolving conflicts in the family, 57.21 per cent (234) answered that discussion was the usual means of solving problems involving threats, reprimands, punishment, beatings or silences.

133. Lastly, the report states that 92 per cent of the persons interviewed asserted that the rights which they have identified as the most important ones are exercised in their family. With regard to the right of freedom of expression, 75 per cent answered that their parents discussed with them such matters as moving house, allocation of domestic tasks, television programmes or use of money. Questioned as to whether their parents respected their personal decisions about dress, leisure activities, free time, studies and friends, 85 per cent of the children and adolescents answered in the affirmative. The optional answer that "no notice is ever taken of my opinion" was recorded in only 2 per cent of cases.

134. We believe that this information collected by a non-governmental organization constitutes a very clear example of the exercise of the right of free expression by young people and children in Uruguay. The fact that the conceptualization of the child as a subject of rights has been recognized in the family environment constitutes a step towards full acceptance of these rights in all areas of social activity.

Articles 14 and 30

135. The freedom of religion is embodied in the Constitution of Uruguay. Since its incorporation in the text of the Carta Magna of 1918 it has remained unchanged throughout the country's constitutional history. The principle stated in article 5 recognizes the freedom of religious sects. The Uruguayan State does not support any religion and there is absolute separation of Church and State. Article 68 of the Constitution guarantees the freedom of education and the right of parents and guardians to choose whatever teachers and institutions they may wish for the education of their children or wards.

136. Where public education is concerned, the reform carried out by José Pedro Varela in 1876, which has remained unchanged down to our times, was founded on the three basic principles that education should be obligatory, free and non-religious. The non-religious nature of education has been conceived as the anti-dogmatic and critical capacity of the teacher, in addition to teaching children to read and write and helping them to learn other subjects, to produce complete men and women capable of thinking and making choices for themselves.

137. Private and religious educational institutions exist side by side with the public schools. Parents are absolutely free to choose one or other type of school, according to their religious beliefs. Montevideo has 247 private schools and a large number of them teach religious beliefs. There are, for example, Catholic schools, a Jewish school, Evangelical Baptist schools, and an Armenian school.

Article 15

138. Article 38 of the Constitution guarantees the right of peaceful and unarmed assembly. The exercise of this right may not be denied by any authority of the Republic except in accordance with the law and only in so far as such exercise may prejudice public health, safety or order.

139. The draft Children's Code provides the right of meeting and association for children and adolescents.

Article 16

140. The section of the Constitution on rights, duties and guarantees accords to all the inhabitants of the Republic the right to protection in the enjoyment of life, honour, freedom, security, work and property.

141. Article 28 states:

> "The papers of private individuals and their correspondence, whether by letter or telegraph or by some other means, shall be inviolable and may never be searched, examined or intercepted except in accordance with laws enacted for reasons of the public interest."

142. Violation of this right is established as a crime in article 296 of the Criminal Code, which states:

> "Any person who, with the intention of learning of its content, opens a letter or listens to a telephone conversation not intended for him commits the crime of violation of correspondence. This crime shall be punished by a fine. Any person who opens, intercepts, destroys or conceals correspondence, parcels or other items sent through the post with the intention of taking possession of their contents or interrupting their normal carriage shall be sentenced to one to four years' imprisonment. The commission of this crime in either of its forms by a public employee of the services concerned shall constitute an aggravating circumstance."

143. In order to protect the lives of children, article 129 of the Children's Code prohibits the reporting of crimes committed by children under the age of 18 in the news media. This article states:

> "The reporting or graphic depiction of crimes committed by children under the age of 18 is absolutely prohibited. Public employees who pass information to the press in contravention of the provisions of the preceding paragraph shall be liable to a fine equivalent to two days' salary for the first offence and to one month's salary for each successive offence. A third offence shall entail dismissal. News media which violate the provisions of the first paragraph shall be liable to a fine

of 20 to 200 pesos for each offence. The fines shall be imposed by justices of the peace, in accordance with the misdemeanour procedure, and the amount shall be deducted by the Secretary of the Children's Council 10/ or by an official designated by him. Decisions of justices of the peace may be appealed before a reformatory judge, 11/ whose ruling shall be final. The guilty person shall pay all the costs of the case. The amount of the fines shall be credited to the Council's account."

144. Lastly, article 3 of Law No. 16,099 of 4 December 1990, known as the Press Law, states that all the inhabitants of Uruguay possess the rights of freedom of opinion and expression. In its article 7 it confers the right to bring legal proceedings in exercise of the right of reply on all "physical or juridical persons in public or private law...".

145. The procedural rules governing court appearances require that minors under the age of 21 shall appear through their legal representatives or guardians or through other persons exercising guardianship over them.

Article 17

146. The public radio and television services are considering broadcasting programmes designed for the age groups with which the Convention on the Rights of the Child is concerned. Children's television programmes broadcast during the daytime use permanent display boards reproducing the articles of the Convention. There is also the State-run Institute of the Book, whose purpose is to encourage reading by adults and children.

147. This Institute's publications enjoy tax exemptions granted by the State which facilitate access to culture by the poorer population groups.

148. In addition, organizations for the protection of human rights have produced at least two publications for children as part of the Campaign for the Rights of the Child promoted jointly by State agencies and non-governmental and academic bodies.

149. The book entitled "Now That We Have Rights", which was funded by the Young People's Christian Association of Sweden and published in collaboration with the Municipal Council of Montevideo, constitutes a valuable contribution to the publicizing of the Convention and the incorporation of the rights of the child in the processes of education through play.

Article 18

150. Article 116 of Uruguay's Criminal Code, which dates from 1878 and has undergone several amendments, states that merely by entering into marriage the spouses incur the common obligation to maintain and bring up their children and

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10/ The Children's Council was replaced by the National Minors' Institute.

11/ The reformatory judges were replaced by juvenile judges.

to provide them with education and vocational training in keeping with their status and circumstances. Natural fathers and mothers have the same legal obligation (art. 277).

151. The obligation to maintain a child includes not only accommodation and food but also clothing, footwear, medicines and payments to doctors and other health workers in the event of illness. It also includes education when the child is under the age of majority. Such maintenance must be provided at the provider's expense and meet the needs of the recipient.

152. In the event of a conflict between persons having legal obligations in this connection, a family judge determines the form and amount of the maintenance which must be provided. This obligation may not be ceded, sold, redeemed or renounced.

153. In the case of minors whose parents have lost parental authority through misconduct or abandonment, a competent judge designates a guardian and sets the amount of maintenance to be paid by the parents and other persons having a legal obligation of maintenance.

154. In the case of unprotected children or children whose parents are unknown, the National Minors' Institute, as the governmental agency responsible for protection of children, initiates proceedings to place such children in foster families. Such families have a legal obligation to satisfy the basic needs of a child's physical and mental development.

155. Deaf-mute and insane children or children with a permanent natural disability are equally entitled to care, and their carers have the same obligations of maintenance.

156. As already stated under article 5, the Uruguayan State has encouraged the establishment of day-care centres where working parents can leave their children. The relevant ministries, autonomous organizations and other public services have concluded agreements with private institutions to provide day care for the children of their employees. There are, for example, the day-care centres of the State Insurance Bank, the National Fuel, Alcohol and Cement Administration, the Ministry of Foreign Affairs, and the Postal Administration.

157. The network of day-care centres of the CAIF Plan (integrated family day-care centres) has been extended to meet the needs of the poorer population groups; these centres have the technical and financial support of UNICEF.

158. There are currently more than 50 such centres located throughout the country.

159. Lastly, the programme of day-care centres and children's day centres run by the National Minors' Institute offers another possibility of free day care for children from poorer families.

160. In addition to these arrangements there is the programme of preventive social action which the National Minors' Institute has been running since 1986.

161. The "Children's Clubs" and the pilot programme for street children are located in areas with a high density of households with unsatisfied basic needs.

This initiative is designed to secure the participation of children by transforming the street (their permanent home) into a playing and learning area. The Children's Clubs seek to provide in a single physical space the school, family and recreation environments.12/

Article 19

162. These social policies are designed to cover the various areas in which children may be victims of abuse, neglect and ill-treatment.

Action to prevent violence

163. In order to improve its preventive action the Ministry of Education and Culture created a programme to combat and eliminate the problems of domestic and sexual violence. This initiative was backed up by the implementation of the family violence prevention, assistance and treatment project of the Ministry of the Interior and the establishment of the first professional assistance service for victims of family violence under the Office for Protection of Mothers and the Family.

164. This assistance programme deals with the initial containment of the crisis. It provides room for thought, analysis, support and counselling as the basis for a diagnosis and evaluation of the risk factors and the victim's degree of vulnerability.

165. The initial emergency action provides physical and emotional protection. A summons is then issued against the aggressor, who is given an opportunity to state his views. Once a diagnosis of the situation is to hand, mediation is attempted. Mediation is regarded as the preferred means of resolving family conflicts and precedes any police or court action.

166. The mediation can include treatment and counselling in coordination with the social support agencies, which can deal with the situation in a comprehensive manner. If the mediation fails, the report to the police is accompanied by a professional assessment of the situation and of possible means of treating the victims.

167. In the case of child abuse the State, through the Office for Protection of Mothers and the Family, coordinates action with a non-governmental organization called ANIMA (National Association for Assistance to Abused Children), and these two bodies monitor the home situation.

168. Over a period of six months ANIMA has been involved in 600 cases of abuse. One of the programmes to be implemented in the near future, for which international financial support is expected, is a children's SOS service, with a mobile unit manned by a professional team which will visit homes in response to anonymous reports and facilitate the handling of cases; this is a new form of effective social control of the problem of child abuse.

12/ See annex 8: leaflets published by the National Minors' Institute.

Sanctions

169. Uruguay's Criminal Code recognizes three degrees of the offence of abandonment of minors. Article 329 states that "Anyone who abandons a child under the age of 10 years who was in his guardianship and whom he had an obligation to care for shall be sentenced, if the offence does not constitute a more serious crime, to six months' to five years' imprisonment." The sentence is increased by one sixth to one third in the following circumstances:

(a) When the abandonment causes the death of or serious injury to the abandoned child;

(b) When the abandonment takes place in circumstances which render it difficult for third parties to provide assistance, by reason of the place, time or weather or for any other similar reason;

(c) When legitimate children or acknowledged or declared natural children are abandoned by their parents or by the spouse of one of their parents.

170. The failure to provide assistance is legally established when a person finding, abandoned or lost, a child under the age of 10 or a person incapable of looking after himself by reason of physical or mental illness or old age does not provide assistance and report the matter to the authorities. The penalty is the same as for the crime of abandonment reduced by one third to one half.

171. Most sexual crimes (rape, indecent assault, corruption of morals, etc.) are subject to more severe penalties when committed against minors or by their relatives or guardians. Lastly, as far as the civil law is concerned, the ill-treatment of children is a grounds for loss, suspension or restriction of parental authority.

Article 20

172. Uruguay endorses the principle set out in the Convention and tries to ensure that a child temporarily or permanently deprived of his or her family environment has a wide range of alternatives to committal to a State institution.

173. In the Uruguayan system the commonest alternative is that of "carers". Carers are women aged between 25 and 50, of any civil status, who have undergone social and psychological testing by a multidisciplinary team of professionals recognized as specialists by the National Minors' Institute. A child entrusted to a carer goes to live in a family of adults who take the place of his own family and see to his basic needs in the way of food, education and support. As compensation the carers receive pay and a travel allowance from the State.

Article 21

174. Uruguay's legal system allows two kinds of adoption: simple adoption and full or legal adoption.

175. Simple adoption is effected by a notarized deed accepted by the adoptee or his or her legal representatives, provided that certain conditions of age, moral

suitability and property are met by the adopter. This kind of adoption, which is possible even in the case of persons over the age of 18, creates new legal relations between the adopter and the adoptee, but the adoptee retains his rights in respect of his natural family.

176. Full or legal adoption is the normal procedure in the case of abandoned children, orphans or children whose parents are unknown. Children housed by the National Minors' Institute who have been abandoned for more than three years can also be legally adopted. In all these cases the children must be under the age of 18.

177. In the case of legal adoption the adoptive parent or parents must meet the following conditions:

(a) They must have been married for at least five years, be over the age of 30 and at least 20 years older than the child, and the child must have been in their guardianship and maintained by them for not less than three years;

(b) The adoptive parent may be a widower or widow or divorced, provided that the maintenance of the child began during the marriage and continued after the termination of the legal link of matrimony.

178. Legal adoption is granted by the courts in Montevideo and the other departments.

179. During the proceedings an advisory opinion must be given by the Office of the Attorney-General, and when the executive decision is made, the child is registered and the legal adoption becomes irrevocable unless annulled by a court.

180. The proceedings are conducted in absolute secrecy, and the court may refuse to allow reporting or recording of the proceedings in order to safeguard confidentiality.

181. The requirement that the adoptive parents must have been married for five years has been questioned, and its retention is justified only by the length of the period during which the legal adoption law has been in force.

182. However, the judiciary takes a flexible approach and has allowed legal adoption by unmarried couples who can demonstrate emotional stability and a long period of cohabitation.

183. In decision No. 12,222 of the Court of First Instance of Tacuarembó 13/ legal adoption was granted in the case of a couple who had lived together for 17 years and married only a few months before the decision (p. 148, vol. CVI, March-April 1993).

184. At present Uruguayan legislation does not contain any specific rules on international adoption. However, the draft Children's Code does have a special chapter on the adoption of Uruguayan children by persons living abroad. The current legislation gives preference to the placement of children in adoptive

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13/ See annex 9.

families living in Uruguay, and recourse is had to the substantive and procedural rules of the international agreements ratified by Uruguay in the case of adoptive parents living outside the country. In such cases capacity, consent and the other requirements for adoption are regulated by the law of the minor's usual place of residence at the time he is taken into guardianship. This latter criterion is also used to establish court jurisdiction. During simple or legal adoption proceedings the child in question may not leave the country without permission of the court.

Article 22

185. Uruguay is a party to the 1951 Convention relating to the Status of Refugees. The only relevant rule of internal law dates back to 1956 but it has nevertheless provided the framework for an open and flexible policy towards persons who have fled their countries for reasons of persecution.

Article 23

186. The different kinds of disability impose constraints on children with respect to their integration and full participation in the family, community and society. Article 46 of the Constitution recognizes the right of the disabled to receive State assistance. Law No. 16,095 of 4 October 1989 establishes a system of comprehensive protection for the disabled based on the principles of prevention, treatment and rehabilitation of persons with permanent physical or mental disabilities.

187. Article 5 accords the disabled exercise of the following rights without any exceptions, distinctions or discrimination by reason of race, colour, sex, language, religion, political or other opinions, national or social origin, wealth or birth, or by reason of any other personal or family circumstance:

The right to human dignity, whatever the origin, nature or seriousness of the disorder or disability;

The right to a decent life - the most normal and full life possible;

The right of access to means of securing greater independence;

The right to receive medical, psychological and functional treatment, including prosthetic and orthopaedic treatment, as well as medical and social rehabilitation, education, vocational training and retraining and placement in work;

The right to economic security with a decent standard of living;

The right to live in one's family or in a foster home;

The right to protection against any exploitation, control or other discriminatory, abusive or degrading treatment;

The right to qualified legal assistance when such assistance is essential for the protection of the disabled person's physical integrity or property. If he is prosecuted in the courts, the proceedings must take into account his physical or mental condition.

188. Article 6 provides that the State must protect the rights of the disabled to an extent necessary and sufficient for their fullest personal and social advancement and development.

189. It is the responsibility of the Honorary National Commission on the Disabled to draft, study, evaluate and implement national policy plans for the disabled. This Commission consists of representatives of the Ministries of Public Health, Education and Culture, and Labour and Social Security, and of the Governing Board of the National Public Education Administration, the Congress of Local Councils, and the Faculty of Medicine, and a representative of each of the most representative disabled persons' organizations.

The dimension of the problem

190. On the basis of the national household survey carried out in 1991 by the National Statistical Institute, it is estimated that 8 per cent of Uruguayan children aged between three and 17 suffer from some kind of disability.

State action for the disabled

191. The State provides coordinated assistance in:

Action to prevent disability by early identification of disorders;

Medical, psychological and social care;

Comprehensive rehabilitation;

Special social security arrangements;

Vocational and professional training;

Grants or subsidies to facilitate physical and mental activities;

Public transport;

Training of specialists in guidance and rehabilitation work;

Education programmes run for and by the community to help the disabled;

Provision for the disabled in building design and town planning.

Special public education

192. Pursuant to the Law on Comprehensive Protection of the Disabled, the State, through the Ministry of Education and Culture, provides permanent assistance to disabled persons of all ages in educational, sports and leisure, and cultural and social activities, as well as furnishing the necessary scientific, technical or teaching facilities and materials to enable the disabled to develop their mental, artistic, sporting and social capacities to the full.

193. Graduation from special public education schools grew by almost 50 per cent in the period 1975-1991, with the greatest increase in specialized academic subjects. Between 1985 and 1991 the graduation rate fell by more than 50 per cent during the experiment of integrating disabled children with the rest of the school population. At present, special public education reaches 34.5 per cent of all the country's disabled children.

Provision of services

194. In State primary education priority has been given to a special training model for children with special educational needs. The work has focused on three main areas:

Teacher training: courses of specialized training in locomotor and visual disabilities, personality disorders and mental deficiency were extended to two years;

Selection of trained personnel on the basis of competitive examinations and merit;

Establishment of special classes in the rural and urban interior (department of Salto - psychotics; Colonia - mentally disabled; Florida - locomotor disabilities).

Disability prevention programmes

195. The official figures show that traffic accidents are the main cause of death in the 1-34 age group in Uruguay. The present aim is to reduce the numbers of deaths and injuries by means of various prevention programmes dealing with speed controls, education of pedestrians, and testing laboratories to determine levels of alcohol, drugs and other medicaments in the blood of persons involved in traffic accidents.

Social security

196. Under the national social security system the State makes cash payments to the parents, other family members or guardians and to health centres caring for children suffering from a mental or physical disability which prevents them from doing normal work.

197. The degree of a recipient's mental disability is certified by the Ministry of Public Health, with which any child diagnosed as mentally backward must be registered.

Recreation centres for the disabled

198. The country's capital has one of the most fully equipped rehabilitation centres in Latin America. This centre has an indoor swimming pool and associated facilities, gymnasiums, psycho-motor hall, library, kitchen, exhibition and conference hall, games and reading rooms, and a complete infrastructure for receiving disabled persons from the country's interior.

Article 24

199. The Uruguayan State is obliged under the Constitution to legislate on all matters relating to health and public hygiene and to seek to improve the physical, moral and social condition of all the country's inhabitants. Citizens, in turn, have a duty to care for their health and seek assistance when ill.

200. Article 44 of the Constitution stipulates that "The State shall provide free of charge the means of prevention and treatment both to indigents and to persons lacking sufficient means". Current health policy has led to an overall reduction in direct State intervention in all areas and the concentration of State assistance on the poorest population groups.

201. The implementation of 12 priority programmes has successfully demonstrated that prevention and education in matters of health is an essential activity of a democratic State. These programmes cover: accidents, cardiovascular disease, mental health, drug and other addictions, maternal and child health, sexually transmitted diseases, AIDS, cancer and dental health.

Mother and child unit

202. This unit seeks to bridge the present divide between prevention, cure and rehabilitation by promoting a strategy of popular participation in the identification and solution of the main health problems of mothers and children. About 785,000 children from birth up to the age of 14 (27 per cent of the total population) and about 613,000 women aged 15 to 44, 88 per cent of whom live in urban areas, receive priority attention under this programme. Three priority areas of action have been chosen: pregnancies and poorly supervised births; the dental health of children; and eye problems.

Child mortality indicators

203. In 1990 the mortality rate of children aged under one year was 20.4 per thousand, but it fell to 20.1 per thousand in 1993.

204. Since 1987 trials have been conducted for the introduction of a family-doctor system, with the doctors selected and trained by the Ministry of Public Health. The Faculty of Medicine and its specialist schools have carried out practical trials in the community, and this has strengthened social participation in health measures.

205. The whole Uruguayan people has direct and close access to public and private health centres. The official figures show an increase in the rate of immunization of children aged under one between 1985 and the present, an increase achieved by the expanded immunization programme run by the Ministry of Public Health and the work of the Honorary Commission to Combat Tuberculosis.

206. The campaigns to prevent epidemic diseases such as cholera have proved successful. The absence of cases of cholera underlines the effectiveness of the methods adopted.

207. We would refer to the comments made earlier with regard to the diet supplements provided by the State.

208. With regard to access to drinking water, out of the 652,330 private dwellings recorded in the latest population and housing census in 1985, 89.5 per cent in urban areas and 9 per cent in rural areas were connected to the national water supply system. The remaining 2 per cent of dwellings were supplied from wells, standpipes and other non-potable sources.

209. The action by the State in this area gives priority to mothers and children. At the end of 1988 an agreement was signed with several public institutions (Ministry of Education and Culture, Ministry of Transport and Public Works, National Food Institute, National Minors' Institute, Social Security Bank) and with UNICEF with a view to introducing a comprehensive plan for children, women and the family. The country has a very low proportion of home births without appropriate supervision by trained personnel. In 1986 it was 0.95 per cent of all births.

210. The statistics show that 36.1 per cent of pregnant women are monitored by State health centres. Care for the remaining 63.9 per cent is provided in collective or private health centres.

211. The legislation provides for measures to encourage maternity leave and breast-feeding. However, only 48.6 per cent of children are breast-fed up to the age of four months.

Public health expenditure

212. Uruguay has made a big effort with respect to maternal and child services during the past decade. Public expenditure on mothers and children rose from $US 226 million in 1983 to $US 331 million in 1989.

Dental health

213. The most widespread dental problems in Uruguay are caries and periodontal disease. An epidemiological study carried out by the Ministry of Public Health and the National Public Education Administration in 1991-1992 produced an indicator of 4.1 for caries, loss and filling among 12-year-olds in the public schools, placing Uruguay in the middle category in the international standings.

214. The measures introduced to correct this situation include the implementation of the salt fluoridation programme from 1991, the availability of toothpastes containing adequate amounts of fluoride, and an experiment with 140 dental surgeries offering free treatment under the auspices of the Ministry of Public Health.

Article 25

215. Executive Decree No. 258 of 17 June 1992 introduced for the first time in Uruguay a code of medical ethics and a list of the rights of patients. This new text draws on the concepts contained in the codes of the American Hospitals Association, the codes recognised by Spanish hospitals and the recommendations of the Health Commission of the Council of Europe. Patients' rights include the right to be given full information about the diagnosis, treatment and prognosis of their illness.

Article 26

216. Article 41 of the Constitution, which dates back to 1934, states:

> "The care and education of children, so that they may attain their full physical, mental and social capacity, is a duty and a right of parents. Persons who have large families to support are entitled to subsidies if required."

217. Law No. 10,449 of 10 November 1943 introduced for the first time in our legislation the principle of family allowances.

218. Law No. 15,084 of 28 November 1980 sets out the system of general benefits. The family allowance is paid to any employed person in the private sector who performs paid services for third parties and has children in his charge. Public employees enjoy the same benefits, but the corresponding regulations are contained in Law No. 11,490 of 18 September 1950 and its regulatory decrees.

219. The children of a worker protected by unemployment insurance are entitled to the family allowance provided that their status is certified in the manner required by the law (article 5 of Decree No. 227/981).

220. The beneficiary of the State benefit is the child or minor in the recipient's charge up to the age 14 years. The age limit may be extended to 16 years in the following cases:

When the beneficiary has not been able to complete primary education at age 14 for justified reasons;

When the beneficiary is the child of a dead employee or an employee who is unfit for work or is serving a prison sentence.

The benefit may be extended to age 18 when the beneficiary is taking an education course above the primary level.

221. If the beneficiary suffers from a mental or physical disability which prevents his taking up paid work, he is entitled to receive the family allowance for life.

222. The administrators of these benefits are all the physical or juridical persons who have effective charge of the upbringing and education of the beneficiary minor and they are therefore obliged to use the benefit for the purposes envisaged by the law. This flexible arrangement, which does not require any parental relationship on the part of the administrators of the benefit, covers the situations of minors in the charge of grandparents or other relations, neighbours or friends, as well as of abandoned or orphaned minors housed in public institutions.

223. The Office of Family Allowances, a State body, may initiate an investigation, following any report, into the administration of the money allocated for a minor. If it is found that such money is being used improperly, a report is made to a juvenile court which appoints a new administrator of the minor's allowance. The family allowance includes cash payments and benefits in kind.

224. The legislation specifies the minimum amounts of the family allowance but leaves it to the Executive to determine the actual amounts paid above the legal minimum.

225. At present the family allowance is 42 pesos per child, equivalent to about $US 10 a month.

226. Law No. 13,711 of 29 November 1968 doubled the amount of this benefit for persons suffering from mental or other kinds of disability.

227. The benefits in kind include prenatal visits to a polyclinic, medical care for the child, and hospitalization for childbirth and the immediate postnatal period. One of these benefits which deserves mention is the first holiday centre for beneficiary minors, which is located in an interior department of the country, and the establishment of a thousand scholarships for preparatory, university and professional studies.

228. Another social benefit, paid in addition to the family allowance, is the maternity grant. All pregnant employed women are entitled to this grant, even if the work relationship has been suspended or terminated for any reason. Women workers receive the cash equivalent of their salary or daily wage for a basic period of 12 weeks.

Article 27

229. With regard to the obligations in respect of maintenance of children we refer to the comments made under article 9.

230. In addition, and to illustrate the situation better, we refer to decision No. 12,475 of the Criminal and Juvenile Court of the department of Maldonado, which found a father guilty of "failing to fulfil the duties of economic assistance inherent in parental authority by giving up his job for fraudulent reasons in order to evade the legal requirement of maintenance."14/

Article 28

231. For more than a century a set of solid values has underpinned the education system in Uruguay. The democratization of access to education, with the corresponding high rate of schooling among all sectors of the nation, the non-religious nature of the education system which fosters an anti-dogmatic and critical attitude in students, and the freedom and independence of education are the main constitutional foundations of Uruguay's system. The Constitution in force since 1967 recognizes education as one of the priority human rights and it makes this recognition manifest by proclaiming the freedom of education, including the right to teach, the right to learn and the right to establish and operate teaching institutions. The compulsory and free status of primary, secondary, agrarian, technical and higher education are the pillars on which the country's whole education system rests.

232. State primary education is free and compulsory. The compulsory module includes six years of basic and three years of secondary education. Seventy-four per cent of children in the school system attend public schools, with the remainder opting for private education. The official figures show that 98.9 per cent of children aged 11 have completed the last year of primary school. According to UNESCO data, in 1986 Uruguay had a school-attendance rate of 92 per cent, occupying fifth place in South America.

14/ See annex 10.

233. Secondary schools are also free and are attended by young people from higher, middle and lower social classes. Graduation from secondary schools has increased steadily since the restoration of democracy. At present 90 per cent of all children aged 13 to 15 are attending the basic single cycle of secondary education, so that the cover is gradually approaching 100 per cent. The graduation rate is stationary since almost total cover has been achieved and the country's demographic growth is virtually nil.

234. University education is also free. Up to 1986 higher education was an absolute State monopoly. That year saw the authorization of Uruguay's first private university, the Catholic University of Uruguay.

235. The university services provide suitable information and guidance about the various course options.

236. According to the 1985 census, 4.3 per cent of the population was illiterate. This is a phenomenon of the older population and is tending to disappear from the younger generations. More detailed studies show that most of the people in this group are functionally illiterate (people who have lost the ability to read and write through disuse or poor learning in the first place).

237. The policy of providing educational incentives helps the poorer population groups by means of programmes such as the one run by the Municipal Council of Montevideo:

(a) Free collective transport for school children;

(b) Free transport for secondary pupils in States schools;

238. The actions taken by the Executive include:

(a) Agreements with the Ministry of Transport and Public Works on school repairs;

(b) Increase of 25 per cent in the salaries of teachers working in schools in deprived areas;

(c) Provision of tax funds to improve the meals services in schools.

Article 29

239. Since 1985 formal education in Uruguay has included a human rights component. In primary schools, as is clear from the document "Survey requested by the Organization of American States on the situation of civic education in Uruguay",15/ the teaching is designed to develop the principles of solidarity, collective participation and respect for the rights of others.

240. Secondary schools deal with these principles in greater detail under the subject "Social and civic education", which has a 12-hour module on the teaching of human rights.

15/ See annex 11: Primary and secondary civic education programmes.

Article 30

241. Uruguay has a homogeneous social composition and no ethnic or linguistic minorities. The racial groups are fully integrated with the rest of the population and there are no inter-racial conflicts.

242. About 6 per cent of the population, a total of 160,000 people, belong to Uruguay's black community. Fifty-one per cent of this group are women.

Article 31

243. Among the leisure activities supported by the State, three recent initiatives deserve mention. The first youth symphony orchestra was created by Decree No. 311/92 of 6 July 1992. A fundamental purpose of this orchestra is to encourage membership by young people from all over the country, supporting their studies and providing opportunities for public performances. Guidance and encouragement is also provided for sports activities for young people as a means of preventing drug use. This policy is backed up by mechanisms for providing funds for cultural activities, such as the sale of State land and use of the proceeds to build leisure and recreation facilities.

Article 32

Child labour

244. The chapter of the Children's Code on child labour consists of 30 articles regulating various aspects of this issue.

245. Work by children aged under 14 in public or private industrial establishments is prohibited throughout the country. The minimum age for farm work is 12 years, providing that work is not done during the school term.

246. Children aged under 14 but over 12 may work in small industrial units alongside members of their families, subject to the consent of their parents or guardians, provided that the work is monitored by a public authority and the children have completed their primary schooling.

247. If it is essential for children to work in order to support themselves or their parents or siblings, the public authority may authorize work by children aged under 14 but over 12, subject to certification that they have completed the elementary course of primary education.

248. Persons under the age of 18 are prohibited from performing hazardous work which may affect their life, health or morals, work which is excessively tiring or work which is beyond their strength. Even light work by persons under 21 is absolutely prohibited in activities which may endanger their health. According to articles 227 and 228 of the Children's Code, any young person under the age of 18 must be in possession of a medical certificate of his physical capacity before he is recruited to a job. Such persons undergo an annual medical examination to determine whether the work is beyond their physical capacity. If it is, they must be provided with more suitable work.

249. The working day of persons under 18 may not exceed six hours, or 36 hours a week, and they must have a two-hour break at midday and a rest day after every six days worked.

250. Employers may be fined for infringement of these special regulations, and if the offence is repeated the owner or person in charge of the establishment may be sentenced to prison.

251. Representatives of a minor who infringe these regulations by allowing the minor to perform prohibited work are liable to fines and possibly terms of imprisonment, account being taken of any civil implications for the suspension, restriction or loss of parental authority or guardianship.

252. The owners or heads of establishments employing minors must fulfil the following administrative responsibilities, subject to fines or imprisonment in the event of violation:

(a) Maintain the hygiene and safety of work places;

(b) Maintain morals and good habits;

(c) Display prominently the legislation on child labour;

(d) Provide free of charge a work booklet including the full name of the minor, his date and place of birth, address, consent of his parents or guardians, medical certificate of fitness for the work, date of recruitment and certificate of primary education in the case of children under the age of 14;

(e) Record all this information in a register kept in the industrial or commercial establishment;

(f) Submit this register every three months to the National Minors' Institute.

253. According to a household survey carried out by the National Statistical Institute, 8.6 per cent of the active male population in Montevideo is aged between 14 and 19 years. The proportion of working women in this age group is 7.1 per cent. In the mainly rural interior areas the figures are 7.6 per cent for men and 9.1 per cent for women.

254. It should be pointed out that according to this same survey children under the age of 14, who are prohibited from working, make up 23.4 per cent of the country's total population.

255. Notwithstanding the legal situation, the Uruguayan State acknowledges that about 4,000 minors work in the formal and informal production sectors. The most serious problem is with piece-work in the home, where there are no registers and the regulations are not observed. Following a case of poisoning of a child aged under 14, the Ministry of Labour and Social Security, the National Minors' Institute and the Footwear Industry Association initiated a study on the working conditions of minors in industry. Companies were ordered to bring their industrial installations into line with the regulations. However, it must be

acknowledged that the increase in the number of young people in the illegal labour market is due to poverty, which the Government intends to tackle as a priority.

Article 33

256. The legislation on narcotic drugs (Decree Law No. 14,294 of 31 October 1974) stipulates aggravated criminal liability in the case of drug dealing when the drugs are supplied to persons under the age of 21.

257. Persons caught in the act of consuming or carrying psychotropic substances are brought before a criminal court which orders a medical examination by the National Commission Against Drug Addiction. If the examination indicates that the person concerned is a drug addict, the court orders appropriate medical treatment, which can be undergone, depending on the circumstances of the case, on an out-patient basis.

Article 34

258. Uruguay's Civil Code, whose guiding principles had remained unchanged since its adoption in 1868, was recently amended by Law No. 16,603 of 19 October 1994. However, it must be pointed out that, in accordance with a provision of this law itself, its entry into force was postponed for 12 months from its promulgation. At the time of preparation of this report the former Code was still in force, but its provisions will be replaced by the new instrument adopted by the Parliament and promulgated by the Executive.

259. Law No. 8,080 of 27 March 1927, known as the Procurement Law, contains provisions to prevent the prostitution of minors.

260. The minimum sentence is four years' imprisonment when the victim is a child under 14 years of age or the perpetrator is a relative or guardian or a person having charge of the boy or girl.

261. The commission of this kind of crime has effects in civil law, including the possible loss, suspension or limitation of parental authority. Article 285 of the new Civil Code specifies the circumstances in which suspension or limitation of parental authority shall be ordered.

262. Parents can be deprived of parental authority by means of an ex parte application upheld by a competent court in the following cases:

(i) If they are sentenced to imprisonment as the perpetrators of or accomplices in a common crime;

(ii) If they are found guilty on two occasions of substitution or concealment, attribution of false filiation or paternity, neglect or abandonment of children, or begging within the meaning of article 348, paragraph 1;

(iii) If they are found guilty of any of the crimes specified in article 274 of the Criminal Code, except for the case provided for in article 284, paragraph 1;

(iv) If they are sentenced to imprisonment on two occasions as the perpetrators of or accomplices in crimes committed in conjunction with their children;

(v) In addition to the cases mentioned in this article and the preceding article, if they incite or encourage in any way the corruption of minors;

(vi) If through depraved or scandalous behaviour, habitual drunkenness, ill-treatment, or neglect of their duties they might jeopardize the health, safety or moral integrity of their children, even when the acts in question do not fall within the scope of the criminal law;

(vii) If there is irrefutable evidence that for a period of a year they have deliberately neglected the duties inherent in their status of parents by not providing their children with proper care and attention.

263. The Office of the Attorney-General and the courts assess the evidence, taking into account the situation of the parents and in particular the interests of the child. Only for duly attested exceptional reasons may the court allow the parents to retain the rights of which they would have been deprived on the grounds set out in subparagraph (vii) above. The provisions contained in the last part of article 284 concerning the rights and obligations of parents and others apply to the cases referred to in this article.

264. Legislation is also being enacted to prevent the entry of under-age immigrants who may be used for prostitution. Article 6 of the former law states that "Any woman or under-age immigrant who is not accompanied by her parents, guardians or other legally authorized persons must inform the immigration service of her destination in the country and remain under supervision until the police authorities report on their investigation of the case."

265. Without prejudice to the measures adopted, it must be acknowledged that white-slave traders continue to use minors of Uruguayan nationality in Italy and Spain.

266. At the internal level, a serious crime concerning the corruption of minors came to light in 1991 at the Nuevo Amanacer hostel, which was operated under an agreement between the National Minors' Institute and the Diocese of Canelones by a religious order called the Brothers of Mercy. Carers, doctors and psychologists discovered irregularities of various kinds affecting children under the age of 12 living in the hostel. Criminal charges were brought, and a parliamentary commission took up the case. Finally, the second-circuit court of Pando imposed a sentence of imprisonment on a monk charged with committing serious sexual abuse of minors in the hostel.16/

267. To enable the Committee to form a judgement about the protection provided by Uruguay's legislation on the prevention and suppression of the promotion of the exploitation or the actual exploitation of children for prostitution,

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16/ See annex 12: Service, Peace and Justice Report 1992, p. 26.

decision No. 12,330 of the Supreme Court of Justice is annexed to this report.17/ The Supreme Court found that the requirements for conviction of the crime of procurement were satisfied in a case in which a woman threatened to lock up her biological daughter to force her to work with herself as a prostitute. Notwithstanding the defence arguments, the initial sentence was upheld even though there was a clear error in the formulation of the charge by the prosecuting authorities.

Article 35

268. The available information will be found under article 14.

Article 36

269. The available information will be found under article 32.

Article 37

270. The law provides serious penalties for the perpetrators of crimes in which minors are the passive victims of attacks against their life or physical integrity, thus protecting children against ill-treatment and torture.

271. In 1994 several cases were reported and resolved concerning the involvement of State officials in the ill-treatment of minors detained by the police. The Police Authority (which supervises the activities of the public security forces) confirmed the need for disciplinary action in a number of cases, and the courts found the persons concerned guilty of the crime of abuse of authority against the detainees.

272. With regard to cases in which minors are the perpetrators of crimes, it must be reiterated that under Uruguay's internal legislation a person under the age of 18 years cannot be charged with a crime and cannot therefore be sentenced to detention. Minors who commit crimes or misdemeanours are dealt with in accordance with special substantive and procedural legislation by the juvenile courts. One advantage of this system is that measures of protection and supervision, known as "safety measures", can be ordered in the case of juvenile offenders. The safety measures provided for in article 92 of the Criminal Code are of an educational nature and designed for the rehabilitation of the children or adolescents in conflict with the law.

273. A study carried out in 1991 by the National Minors' Institute found that there was some abuse by the juvenile courts in the application of these measures which impose limits on the freedom of movement. In order to correct this situation, the Supreme Court of Justice issued Decree No. 21 of 3 June 1991 requiring judges who order security measures:

To specify the reasons for the decision;

To inform the National Minors' Institute of the type of detention sought and the rehabilitation proposed;

17/ See annex 13: Decision No. 12,330, vol. XVII, July-August 1993, p. 91, in the periodical La justicia uruguaya.

To describe the personal characteristics and background of the minor and state whether they indicate the need for detainment in a high-security establishment;

Once the court decision has been handed down, the group of professionals (psychologists, social workers and doctors) of the National Minors' Institute are required by law (art. 119 of the Children's Code) to prepare a diagnostic report on the physical and mental state of the minor, including an outline of the rehabilitation strategy.

274. Until now, minors subject to corrective measures could never be detained in places intended for adults. A bill has been introduced which would allow such detention, subject to certain guarantees.

275. With regard to the protection of minors against illegal or arbitrary detention, the legislation embodies the principle of habeas corpus and the right to legal aid by public defence attorneys designated to work with minors.

Article 38

276. Uruguay does not have compulsory military service. All recruitment to the armed forces is voluntary and the recruitment of persons below 18 years of age is prohibited. Even in wartime only persons over the age of 18 may serve in the reserve forces.

277. During the debates which led to the adoption of the Convention on the Rights of the Child, Uruguay declared its wish that the States parties should seek the gradual elimination of the provisions allowing direct or indirect participation in hostilities by persons below 18 years of age.

278. Uruguay is a party to the 1949 Geneva Conventions and to Protocols I and II Additional to the Geneva Conventions.

279. In fulfilment of the obligations to respect and publicize international humanitarian law, even in peace time, in 1991 Uruguay established a ministerial commission responsible for implementation of these instruments and their incorporation in internal law.

280. Uruguay leads the continent in this respect, and its vision is made manifest in legislation which is fully in accordance with the Convention on the Rights of the Child.

Article 40

281. Uruguay's legislation is consistent with the spirit of article 40 of the Convention. The rules governing the determination of criminal behaviour on the part of minors in Uruguay are set out in the special legislation contained in the Children's Code.

282. As confirmed by a Decree of the Supreme Court of Justice 18/ based on the provisions of the international human rights instruments, such matters are

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18/ See annex 14.

governed by the principle of legality which states that "only persons below 18 years of age who commit acts defined as crimes or misdemeanours in the criminal law may be regarded as juvenile offenders."

283. The presumption of innocence is embodied in the Constitution and recognizes no differences between minors and adults. In any event, the new version of the Children's Code, which is in an advanced stage of preparation, states as a general principle that no person below 18 years of age may be regarded as involved in an act defined as a crime or misdemeanour in the criminal law until such involvement is proved (art. 146 of the proposed reform).

284. The guarantees of due process and of respect for the periods of education prescribed by law are founded on the provisions of article 16 of the Constitution, which are reflected in articles 119 to 130 of the Children's Code. Article 16 of the Constitution states:

> "In any of the cases envisaged in the preceding article, the judge, under the gravest responsibility, shall take the statement of the person under arrest within 24 hours and shall begin the summary process within 48 hours at the latest. The statement of the accused must be taken in the presence of his defender. The latter shall also have the right to attend all summary hearings."

Article 130 of the Children's Code states:

> "Whenever the police apprehend <u>in flagrante delicto</u> a person apparently under the age of 18 years, such person shall be brought before a juvenile judge, and the official report shall state the facts obtained at the place of the offence, the date of birth of the detainee, and the full names and addresses of his parents. The judge shall question the detainee within 24 hours, and if the detainee is a Uruguayan national the judge shall immediately make an official request for his birth certificate to the Office of Civil Status, which must present the certificate or confirm that none exists within 10 days. When there is any doubt about the age of the detainee which might alter the jurisdiction, the judge shall again make an official request to the Director of the Office, and in this case the requested information must be presented within three days, under warning of submission of a report to the ministry concerned ...."

285. Article 120 of the current Children's Code states:

> "In order to elucidate the facts and the minor's personal or family background, the judge shall always take statements from the minor and his parents or guardians and visit any places which he sees fit and order any necessary hearings, reports and examinations, which shall be referred to in the decision, for which full reasons must be given. The hearings may be attended, in addition to the prosecutor and defender, only by the legal representative of the minor, with his lawyers and the social worker, if any, and any other persons duly authorized by the judge if they so wish, and all these persons may make any oral or written statements which they regard as relevant, but the judge's decision shall be accepted. Applications for reconsideration or appeal, with the grounds stated, shall be the only recourse against the judge's provisional ruling, and such applications may be filed only by the prosecutor or the minor's defender.

When the judge regards it as appropriate, he shall rule that the relevant testimony shall be taken at the place of the proceedings, which shall continue despite the appeal."

The draft reform of the Children's Code reproduces this procedure with the addition of a number of specific guarantees, such as for example the sanction of the absolute inadmissibility of statements made by minors during the investigation when their defenders are not present. Within a time limit of 48 hours the judge must decide whether the case has merit and rule on provisional arrangements for the minor pending the final decision, which must be taken within a maximum period of 120 days.

286. As stated above, the prosecutor and the minor's defender may propose the presentation of any kind of evidence (documentary, oral, expert, etc.) admissible under ordinary law.

287. The action to be taken with respect to a juvenile offender falls within the exclusive competence of the juvenile courts.

288. When persons who do not speak Spanish appear before a court, they must have the assistance of interpreters or translators, in accordance with the general rule set out in the procedural legislation.

289. Article 129 of the Children's Code absolutely prohibits any reporting or graphic depiction of offences committed by persons below 18 years of age.

290. The juvenile courts may order various educational measures, including:

(a) The return of the minor to his home;

(b) The issue of a formal warning before the court signed by the parents and the minor;

(c) Payment of compensation for the damage caused;

(d) An order of work in the community (schools, hospitals, public places, etc.) under the supervision of social workers, when appropriate;

(e) An order to report to officers of the court at appropriate intervals;

(f) A ban on visiting certain places;

(g) An order giving custody of the minor to third parties;

(h) Detention in an appropriate institution.

As can be seen, detention is the last resort for the rehabilitation of juvenile offenders.

291. With reference to the protection measures which come into play after completion of the legal proceedings in connection with offences committed by minors, the Supreme Court of Justice, as the supreme legal body, issued

Decree No. 7,183 which refers inter alia to the obligations stemming from Law No. 16,137 which ratified the Convention on the Rights of the Child. This Decree provides for:

(a) Regular visits by the Court to places of juvenile detention, in accordance with the provisions of article 239, paragraph 2, of the Constitution and article 113 of the Children's Code;

(b) The presence during such visits of the relevant public defenders;

(c) Direct interviews with each of the detainees, and a statement for the record of the state of the establishment, the medical or other specialized services available, and the activities carried out by the inmates;

(d) Submission by the relevant courts to the Supreme Court before March each year of a report containing a detailed account of all the cases heard by them involving juvenile offenders who have been placed in detention or in respect of whom no "safety measures" have been ordered.